

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Nathan Louis Lomax,

Case No. 2:23-cv-01894-CDS-BNW

Plaintiff

Order Denying Applications to Proceed in Forma Pauperis, Dismissing and Closing Case

Gabriela Najera, et al.,

Defendants

[ECF Nos. 4, 6]

9 Pro se plaintiff Nathan Louis Lomax brings this civil rights action under 42 U.S.C. § 1983
10 to redress constitutional violations that he claims he suffered while incarcerated. ECF No. 1-1. On
11 November 27, 2023, after Lomax filed an incomplete application to proceed *in forma pauperis*
12 (“IFP”), this court ordered him to file a fully complete IFP or pay the full \$402 filing fee on or
13 before January 19, 2024. ECF Nos. 2, 3. The court warned Lomax the action could be dismissed if
14 he failed to file a fully complete IFP with all three documents or pay the full \$402 filing fee for a
15 civil action by that deadline. ECF No. 3 at 2. In response, Lomax submitted another incomplete
16 IFP. ECF No. 4. On January 22, 2024, the court again ordered Lomax to file a fully complete IFP
17 or pay the full \$402 filing fee on or before February 23, 2024. ECF No. 5. Lomax once again filed
18 an incomplete IFP. ECF No. 6. Since initiating this lawsuit, Lomax has filed three incomplete
19 IFPs each missing a financial certificate and inmate accounting statement for the previous six-
20 month period. See ECF Nos. 2, 4, 6.

I. Discussion

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.

Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether

1 to dismiss an action on one of these grounds, the court must consider: (1) the public's interest in
 2 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
 3 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;
 4 and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460
 5 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this litigation and
 7 the court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's claims. The
 8 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 9 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 10 ordered by the court or prosecuting an action. *See Anderson v. Air W. Inc.*, 542 F.2d 522, 524 (9th
 11 Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is
 12 greatly outweighed by the factors favoring dismissal.

13 The fifth factor requires me to consider whether less drastic alternatives can be used to
 14 correct the party's failure that brought about the need to consider dismissal. *See Yourish v.*
 15 *California Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
 16 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
 17 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts “need not exhaust every
 18 sanction short of dismissal before finally dismissing a case, but must explore possible and
 19 meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this
 20 court cannot operate without collecting reasonable fees, and litigation cannot progress without a
 21 plaintiff's compliance with court orders, the only alternative is to enter a third order setting
 22 another deadline. But issuing a third order will only delay the inevitable and further squander the
 23 court's finite resources. Setting another deadline is not a meaningful alternative given these
 24 circumstances. So, the fifth factor favors dismissal. Having thoroughly considered these dismissal
 25 factors, I find that they weigh in favor of dismissal.

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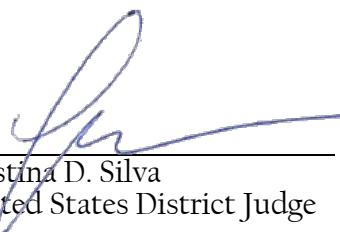
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1 II. Conclusion

2 It is therefore ordered that this action is dismissed without prejudice based on Lomax's
3 failure to file a fully complete IFP or pay the full \$402 filing fee in compliance with this court's
4 November 27, 2023, and January 22, 2024, orders. The Clerk of Court is directed to enter
5 judgment accordingly and close this case. No other documents may be filed in this now-closed
6 case. If Lomax wishes to pursue his claims, he must file a complaint in a new case and either pay
7 the required filing fee or properly apply for *in forma pauperis* status.

8 It is further ordered that the incomplete IFPs [ECF Nos. 4, 6] are denied without
9 prejudice.

10 Dated: February 27, 2024

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13 Cristina D. Silva
United States District Judge

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